

ALLAHABAD HIGH COURT

Nathan

Vs

Harbans Singh

(Iqbal Ahmal C.J, P.L.Banerji and S.N Seth)

14.12.1929

JUDGMENT

Iqbal Ahmal C.J,

1. This is a Letters Patent appeal by the defendants against the decree of a learned single Judge of this Court, awarding the plaintiffs possession of 29 bighas 1 biswa of land. The facts which are not in dispute are as follows: The plaintiffs lessed 48 bighas 1 biswa of land to the defendants at an annual rent of Rs. 99 for the purpose of gathering thatching grass. This lease was admittedly a lease from year to year terminable by notice from the plaintiffs. The plaintiffs gave notice and brought a suit against the defendants for ejection in the revenue Courts and it was eventually held by the Board of Revenue that the revenue Courts had no jurisdiction to entertain such a suit. Accordingly, the plaintiffs after that adjudication issued a fresh notice to the defendant and brought a suit in the civil Court. The Court of first instance and the lower appellate Court dismissed the suit of the plaintiffs on the ground of want of jurisdiction.

2. It is settled by rulings of this Court, of which we may quote *Param Hansman Tewari v. Dasrathiman¹ Tewari* that a suit for ejection of a tenant from land which has been leased to him for grazing cattle or cutting grass is cognizable by the revenue Court only as a suit for ejection of a non-occupancy tenant under Section 58 and Section 63, Tenancy Act. The argument in favour of the plaintiffs is that because the revenue Court of final appeal has held that the suit is not cognizable by the revenue Courts, therefore that matter is res judicata between the parties and cannot be pleaded as a ground of defence in the civil Courts. We do not agree with this contention. We consider that as this Court has held that such a suit lies only in the revenue Courts, this Court cannot hold that it is bound by a decision of the Board of Revenue to the contrary effect, merely because that decision was given in a suit between the present parties.

3. One member of this Bench sitting singly in *Jwala Debi v. Amir Singh²* in a similar case held that a decision in a former Suit between the parties by a revenue Court on the question of jurisdiction did not operate as res judicata in the civil Courts.

4. Accordingly we allow this Letters Patent appeal and direct that the plaint be returned to the plaintiff for presentation to the revenue Court. In case the objection is made in the revenue Court that the parties are bound by the previous decision between them by the Board of revenue, it will be open to the revenue Court to make a reference to this Court, under Section 267, Act 3 of 1926, and under Sub-section 5 of that section, the orders of this Court are final and binding on all Courts subordinate to it or to the Board of Revenue. Parties will bear their own costs in all Courts.

Cases Referred.

1A.I.R. 1921 All. 128

2A.I.R. 1929 All. 132